

**ST 02-3**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**ABC MINI MART,  
DIVISION OF XYZ OIL COMPANY,  
TAXPAYER**

**NO. 01-ST-0000**

**IBT No. 0000-0000**

**Ass. Nos. 00 0000000000000000**

**00 0000000000000000**

**Kenneth J. Galvin**

**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. John Doe, appearing *pro se*; Mr. Shepard Smith, appearing on behalf of the Department of Revenue of the State of Illinois.

**Synopsis:**

On December 19, 2000, and January 24, 2001, the Illinois Department of Revenue (hereinafter the "Department") issued "Notices of Assessment" (hereinafter "NOA") to ABC Mini Mart, Division of XYZ Oil Company, (hereinafter the "taxpayer") for unpaid sales tax, late payment penalties and interest, covering the periods of October, and November, 2000, respectively. On July 31, 2001, taxpayer protested the NOA's.

On October 24, 2001, taxpayer appeared for an initial automatic status conference, and requested a hearing as to reasonable cause for the abatement of the late

payment penalties. The hearing was held on November 13, 2001, with taxpayer's accountant, Jane Doe, testifying. Following a review of the testimony and the evidence, it is recommended that the late payment penalties be abated. In support thereof, the following "Findings of Fact" and "Conclusions of Law" are made.

**Findings of Fact:**

1. The Department's *prima facie* case is established by the admission into evidence of "Notices of Assessment for Form ST-1," numbers 00 0000000000000000 and 00 0000000000000000, issued December 19, 2000, and January 24, 2001, respectively, and showing a late payment penalty of \$951 for October, 2000, and unpaid tax of \$91 and late payment penalty of \$1,020 for November, 2000. Tr. pp. 5-7; Dept. Ex. Nos. 1 and 2.
2. In October, 2001, taxpayer received a "EFT-2, Sales and Use Tax Quarter-Monthly Payment Schedule," for the period 10/00 through 12/00. The EFT-2 provided the following "Schedule of Electronic Funds Transfer-Quarter-Monthly Payment:"

<b><u>Date Due</u></b>	<b><u>Amount Due</u></b>
10/10/00	6635.00
10/16/00	6635.00
10/23/00	6635.00
10/31/00	6635.00
11/08/00	5914.00
11/15/00	5914.00
11/22/00	5914.00
11/30/00	5914.00

The Schedule states that "[F]or each quarter-monthly payment, you must pay either ... (or) 25% of the liability from the same month of the previous year, as reflected by the amounts preprinted above. Tr. pp. 11-13; Dept. Ex. No. 3.

3. In October and November, 2000, taxpayer made quarter-monthly payments of \$2,000, or \$8,000 per month. The actual liability for October and November, 2000, was \$14,700 and \$13,009, respectively. Tr. pp. 16-17; Department's Ex. No. 3.
4. Taxpayer was assessed late payment penalties of \$951 and \$1,020 for October and November, 2000, respectively, because its \$8,000 remittance was not enough to cover the amount owed for the sales tax quarter-monthly payment. Dept. Ex. No. 3.

### **Conclusions of Law:**

Taxpayer's argument for penalty abatement is as follows: When taxpayer's accountant, Jane Doe, received the "EFT-2, Sales and Use Tax Quarter-Monthly Payment Schedule," she was aware that the State of Illinois had recently lowered the 5% tax on gasoline and road fuel, which was 90% of ABC's business. Tr. p. 9. Ms. Jane Doe interpreted the "EFT-2" "to say that we were going to pay 25 percent of what we used to pay; and because I knew that this 5 percent reduction was going to make such a large difference in our sales tax liability, I didn't question it..." Tr. p. 10.

Taxpayer then made quarter-monthly payments of \$2,000, which were approximately 25% of the amounts shown as due on the "EFT-2," \$6,635 and \$5,914, for October and November, 2000, respectively. Accordingly, taxpayer paid \$8,000 for October and November, 2000. The actual sales tax figures were \$14,700 and \$13,009 for October and November. If taxpayer had paid the "Amount Due" according to the "EFT-2," taxpayer would have paid \$26,540 (\$6,635 x 4) and \$23,656 (\$5,914 x 4) for October and November. Although taxpayer underpaid the tax for the two months, taxpayer's

estimates were actually closer to the actual sales tax figures than the “Amount Due” shown on the “EFT-2.”

One of the most important factors to be considered in making a determination to abate a penalty is the extent to which the taxpayer made a good faith effort to determine its proper tax liability. A taxpayer will be considered to have made a good faith effort to determine its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill.Adm.Code § 700.400. In the instant case, taxpayer incorrectly interpreted the instructions on the “EFT-2,” with regard to the 25 percent payment required. However, in light of the anticipated reduction from the State’s lowering of the tax on gasoline and road fuel, taxpayer’s interpretation seems reasonable. No evidence was presented by the Department that taxpayer had underpaid its sales tax liability at any previous time.

I have concluded in this case that the taxpayer made a good faith effort and exercised ordinary business care in determining its correct sales tax liability. Accordingly, the Notices of Assessment for October and November, 2000, should be revised to reflect the abatement of all penalties.

December 18, 2001

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Kenneth J. Galvin  
Administrative Law Judge